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DISTRICT COURT, JEFFERSON COUNTY, COLORADO 30 1990
CASE NO. _____ Div/CtRm _____

SUMMONS

WESTERN STATES MINERALS CORPORATION, a Utah Corporation,
Plaintiff
ASOMA (UTAH) INC., a Delaware Corporation, JUMBO MINING COMPANY, an Unincorporated Association, ED B. KING, a/k/a E.B. KING, and JANET KING,
Defendant

**The People of the State of Colorado
To the Defendant(s) named above:**

You are summoned and required to file with the clerk of this court an answer or other response to the attached complaint within twenty (20) days after this summons is served on you in the State of Colorado, or within thirty (30) days after this summons is served on you outside the State of Colorado.

If you fail to file your answer or other response to the complaint in writing within the applicable time period, judgment by default may be entered against you by the court for the relief demanded in the complaint, without any further notice to you.

The following documents are also served with this summons: COMPLAINT

Date: October 24, 1990

[Signature]
Signature of Attorney for Plaintiff or Clerk Deputy Clerk of Court
If signed by attorney, type Name, address, tel. # reg # below

Stephen D. Alfers, #07676
Lisa M. Bain, #018197
370 17th Street, Suite 4700
Denver, Colorado 80202
Telephone: (303) 892-9400
Attorneys for Plaintiff

This summons is issued pursuant to Rule 4, CRCP, as amended.
A copy of the complaint must be served with this summons.

RETURN OF SERVICE

State of _____
County of _____

I declare under oath that I served this summons and a copy of the complaint in this case on _____
in _____ County _____
on _____ at _____ at the following location:
Time

- by handing it to a person identified to me as the defendant.
 - by leaving it with the defendant who refused service.
 - by leaving it with _____ designated to receive service for the defendant.
 - I am over the age of 18 years and am not interested in nor a party to this case.
 - I attempted to serve the defendant on _____ occasions but have not been able to locate the defendant.
- Return to the plaintiff is made on _____
Date

Subscribed and sworn to before me this _____ day of _____, 19 _____
in _____ County, State of _____

Notary Public*

Date

- Private process server
- Sheriff, _____ County
- Service \$ _____
- Mileage \$ _____

*Notary should include address and expiration date of commission.

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Attorneys for Plaintiff

DISTRICT COURT, JEFFERSON COUNTY, COLORADO

Case No. _____

COMPLAINT

WESTERN STATES MINERALS CORPORATION,
a Utah corporation,

Plaintiff,

v.

ASOMA (UTAH) INC., a Delaware corporation,
JUMBO MINING COMPANY, an unincorporated
association, ED B. KING, a/k/a E.B. KING,
and JANET KING,

Defendants.

CERTIFICATION CONCERNING MANDATORY ARBITRATION

Plaintiff, Western States Minerals Corporation
("Western States"), by its counsel, Davis, Graham & Stubbs,
pursuant to C.R.C.P. 109.1, certifies that:

- a) the probable amount of recovery, exclusive of
interest and costs, exceeds \$50,000;
- b) Western States is not exempt from arbitration; and

c) this action is not subject to mandatory arbitration because Western States seeks damages in excess of \$50,000 and seeks equitable relief.

Western States, by its counsel, Davis, Graham & Stubbs, for its complaint against Asoma (Utah) Inc., Jumbo Mining Company, Ed B. King, a/k/a E.B. King, and Janet King (collectively, the "Defendants"), states as follows:

PRELIMINARY STATEMENT

1. This is a civil action against Defendants for damages and equitable relief for Defendants' breach of a contract under which Western States sold to Defendant Asoma (Utah) Inc. ("Asoma") mining properties located in Millard and Juab Counties, Utah.

2. Defendants' breach stems from their refusal to take all the steps required under the contract to assume all reclamation responsibilities for the purchased property.

PARTIES

3. Plaintiff Western States is a corporation incorporated in the State of Utah, licensed to do business in Colorado with its principal place of business at 4975 Van Gordon Street, in Wheat Ridge, County of Jefferson, State of Colorado.

4. Defendant Asoma, on information and belief, is a corporation incorporated in the State of Delaware, with its principal place of business in the State of Texas.

5. Defendant Jumbo Mining Co. ("Jumbo"), on information and belief, is an unincorporated association whose members consist of Defendants Ed B. King (a/k/a E.B. King) and his wife, Janet King. On information and belief, Jumbo is the successor in interest to Defendant Asoma.

6. On information and belief, E.B. King and Janet King are domiciled in the State of Texas. E.B. King was the president of Asoma, and, upon information and belief, he is now a principal for Jumbo.

JURISDICTION AND VENUE

7. Jurisdiction is proper in the District Court for the County of Jefferson, State of Colorado pursuant to Colo. Const. VI, § 9 and Colo. Rev. Stat. § 13-1-124 (1)(a) (1987) for reasons including, but not limited to, the fact that Western States' causes of action arise out of the following actions by the Defendants in the State of Colorado: a) Defendants'

negotiation and delivery of an executed Option Agreement dated effective June 30, 1988, between Western States and Defendants (the "Option Agreement"), all occurring in the State of Colorado; b) the Option Agreement provides that "the formation, interpretation, and performance of the Agreement shall be governed by the law of the state of Colorado"; c) the closing of the purchase and sale of the Option Agreement in the offices of Knutson, Brightwell & Reeves, attorneys at law in Denver, Colorado on October 12, 1988; d) Defendants' attorney's delivery to Western States, at the closing, of the Quitclaim Deed and Assignment, a Promissory Note and the delivery of purchase funds in the offices of Knutson, Brightwell & Reeves, attorneys at law in Denver, Colorado; and e) Defendants' execution of a Promissory Note in payment for the Quitclaim Deed and Assignment, payments under which were to be made to Western States in Wheat Ridge, Colorado.

8. Venue is proper in the District Court for the County of Jefferson, State of Colorado pursuant to C.R.C.P. 98(c), inasmuch as the Defendants are all nonresidents of the State of Colorado and Western States' principal place of business is located in the County of Jefferson, State of Colorado.

GENERAL ALLEGATIONS

9. Western States and Asoma entered into a written Option Agreement, dated June 30, 1988, attached hereto as Exhibit A and made a part hereof by this reference (the "Option Agreement"). Pursuant to the Option Agreement, Western States granted to Asoma the sole and exclusive option to purchase a gold mining operation comprised of unpatented lode mining claims located in Millard and Juab Counties, Utah, as well as certain private leasehold interests, Utah State Leases, water rights, associated heap leach pads, a recovery plant, and other personal property, collectively defined in the Option Agreement and hereinafter referred to as the "Properties."

10. The Option Agreement provided that at closing Western States:

shall deliver to Asoma . . . any permits relating to the properties.

(Option Agreement, page 3). This obligation was unconditional.

11. Under the Option Agreement, Western States gave Asoma 90 days within which to exercise its option. During the option period, Western States was to and did make available to Asoma all "title information, geological reports, analyses, and studies, drilling logs, assays, drawings, maps, and other documents and data relating to the Properties." (Option

Agreement, page 2). The Option Agreement further provided that "Asoma shall make their own independent analysis of the Properties, and in exercising the option they shall not rely upon any representation made by [Western States] concerning the Properties or the furnished data." (Option Agreement, page 2).

12. On September 20, 1988, ten days before the expiration of the option period, Asoma telecopied a memorandum to Western States setting forth certain environmental problems identified by Asoma in its "due diligence" review of the Properties. In that memorandum, Asoma noted a number of problems with the Properties including, inter alia, that six of ten heaps (for heap leaching mining operations) were constructed without permits, that leaching on the unpermitted heaps would have to cease by order of the State of Utah after December 1, 1988, and that leaching on the permitted heaps could continue only until October 1, 1990, when "all heaps must be taken out of service and reclaimed." Based on these facts, Asoma, inter alia, asked for a renegotiation of the deal or a return of its \$30,000 option payment.

13. By a letter dated September 21, 1990, Western States refused to either refund the \$30,000 option payment or to renegotiate the deal. Western States insisted that the parties adhere to the terms of the Option Agreement.

14. On September 23, 1990, seven days before the Option Agreement was to expire, Asoma sent a letter to Western States disagreeing with Western States' September 21 letter and reiterating Asoma's concerns over the regulatory status of the Properties. It indicated that Asoma would meet soon with State of Utah officials to discuss the regulatory problems associated with the Properties.

15. That same day, September 23, 1990, Western States responded as follows:

We have reviewed your letter of September 23, 1988. Your letter raises no new issues. Therefore, please refer to our letter of September 21, 1988 and the Option Agreement.

16. On September 28, 1988, two days before expiration of the option period, Asoma exercised its option to purchase the Properties. Asoma did so with full knowledge of any regulatory problems related to the Properties.

17. On October 12, 1988, Asoma purchased the Properties. At the closing of the purchase and sale of the

Properties, Western States delivered to Asoma a written Quitclaim Deed and Assignment, attached hereto as Exhibit B.

18. Both Western States and Defendants understood that upon the closing of the purchase and sale of the Properties, Defendants would apply to the Utah Division of Oil, Gas and Mining for approval of an assignment of Western States' operating permits to Defendants, and that upon that assignment Western States' reclamation bond on the Properties would be released.

19. As set forth in the Quitclaim Deed and Assignment, Defendants were required to abide by all of the conditions of all of the permits related to the Properties:

[Asoma] agrees to comply with and to be bound by the terms and conditions of said leases, agreements, and permits

(Quitclaim Deed and Assignment, paragraph 3).

20. Western States conveyed the Properties to Defendants on an "as is" basis. As spelled out in the Quitclaim Deed and Assignment, "[Western States] makes no warranty, express or implied." (Quitclaim Deed and Assignment, paragraph 5).

21. As demonstrated by the quoted text in the above-described letters of September 21, 1988 and September 23, 1988, Defendants purchased the Properties, and the accompanying operating permits, with full knowledge of any regulatory problems associated with them and subject to the express disclaimer of warranty in the Quitclaim Deed and Assignment.

22. Following the closing, Defendants took possession of the Properties and the associated processing facilities and, since the closing, Defendants have maintained possession, and carried out exploration and processing activities on portions of the Properties.

23. Adhering to the terms of the Option Agreement, following the closing of the purchase and sale of the Properties, Western States approached the Utah Division of Oil, Gas and Mining seeking approval of the transfer of its operating permits to Defendants and the release of Western States' reclamation bond.

24. Pursuant to its own rules and regulations, the Utah Division of Oil, Gas and Mining was unable to transfer Western States' operating permits and release Western States' bond; unless the Defendants first applied for the transfer and assumed reclamation obligations under the permits.

25. Despite Western States' repeated requests, the Defendants refused to assume the entire reclamation obligations associated with the operating permits assigned to Defendants at the closing.

26. On or about July 27, 1989, to accommodate the Defendants' desire to achieve production, Western States consented to Defendants' request for a partial transfer of certain selected operating permits, and the Utah Division of Oil, Gas and Mining approved that transfer upon Defendants' assumption of the obligations under those permits Defendant selected for transfer.

27. Western States consented to the partial transfer of operating permits in good faith, contemplating eventual transfer of all operating permits and release of Western States' bond.

28. The Defendants have commenced operations pursuant to the selected transferred permits, and, upon information and belief, have enjoyed the benefits of such operations.

29. Despite Western States' repeated attempts to have Defendants assume the entire reclamation obligation for the Properties pursuant to the express terms of the Option Agreement and the Quitclaim Deed and Assignment, Defendants have refused to assume, and have continued to refuse to assume, their contractual obligation.

30. Western States has fulfilled all conditions precedent to Defendants' performance under the Option Agreement and the Quitclaim Deed and Assignment.

FIRST CLAIM FOR RELIEF - INJUNCTIVE RELIEF

31. Western States repeats and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 30 above.

32. Despite Defendants' failure to secure operating permits for the entire Properties, Defendants have been conducting mining operations on the Properties.

33. Western States now has outstanding operating permits on portions of the Properties conveyed to Defendants and a reclamation bond in the amount of \$264,080 on the entire Properties, which has not been released and has not been replaced by Defendants' bond. If Defendants violate the conditions of Western States' operating permits, which should properly have been transferred to Defendants, Defendants' actions on the Properties may, in addition to causing the forfeiture of Western

States' reclamation bond, require Western States to undertake reclamation obligations on the Properties properly the responsibility of Defendants, resulting in loss of business during such reclamation, a loss of business reputation, especially in Utah, where Western States maintains other mining properties, and potential criminal sanctions imposed by the Utah Division of Oil, Gas and Mining.

34. Unless Defendants are restrained during the pendency of this action and permanently thereafter from conducting any leaching or mining activities on the Properties covered by Western States' reclamation bond and operating permits, Western States will suffer irreparable harm, damage and injury because it may be subject to civil and criminal sanctions by the Utah Division of Oil, Gas and Mining for Defendants' failure to comply with the terms of Western States' operating permits.

35. A preliminary injunction is necessary because Western States has no adequate remedy at law or otherwise for the harm threatened to be done by Defendants.

36. WHEREFORE, Western States prays that this Court issue an order, absent an agreement and arrangement acceptable to Western States, that Defendants, their servants and employees be enjoined from conducting any leaching or mining activities on the Properties covered by Western States' operating permits and bond during the pendency of this litigation and permanently thereafter.

SECOND CLAIM FOR RELIEF - REFORMATION OF DEED

37. Western States repeats and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 36 above.

38. Prior to the preparation of the Quitclaim Deed and Assignment, the parties orally agreed that Asoma, as Assignee, would undertake all reclamation on the Properties. An error occurred in reducing the agreed upon provisions to writing so that the Quitclaim Deed and Assignment does not embody the actual agreement between the parties. In the last sentence of paragraph 3 of the Quitclaim Deed and Assignment, however, due to a scrivener's error, the reclamation obligation was erroneously described as being that of the Assignor, Western States.

39. Western States and Asoma executed the Quitclaim Deed and Assignment in the belief that it embodied the actual agreement between the parties.

40. On or about March 10, 1989, Western States discovered the mistake in the last sentence of paragraph 3 of the Quitclaim Deed and Assignment and requested that Asoma execute a corrected Quitclaim Deed and Assignment which would substitute the word "Assignee" for the word "Assignor" in the last sentence of paragraph 3 of that instrument as the parties intended. Asoma failed to respond.

41. At the request of Western States, on March 16, 1989, Defendant E.B. King, as President of Asoma, acknowledged the error in paragraph 3 of the Quitclaim Deed and Assignment and executed an audit letter, attached hereto as Exhibit C, which, inter alia, contained the following affirmation:

Asoma agreed to indemnify Western States Minerals Corporation pursuant to the indemnity provisions contained in the Quitclaim Deed and Assignment and assumed responsibility for all reclamation costs.

Under the terms of the audit letter, by Defendant E.B. King's signature, Asoma confirmed that "the above is correct."

42. Western States later renewed its request that Asoma execute a corrected Quitclaim Deed and Assignment to correct the last sentence of paragraph 3 of that conveyance. Asoma refused to do so.

43. WHEREFORE, in order to make the Quitclaim Deed and Assignment conform to the actual intent of the parties, Western States requests that this Court order that the Quitclaim Deed and Assignment be reformed to express the true intent of the parties and order that Western States and Asoma execute a corrected Quitclaim Deed and Assignment which substitutes the word "Assignee" for the word "Assignor" in the last sentence of paragraph 3.

THIRD CLAIM FOR RELIEF - BREACH OF CONTRACT - DAMAGES

44. Western States repeats and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 43 above.

45. Under the Option Agreement and the Quitclaim Deed and Assignment, Defendants took the Properties as is and pursuant to an express disclaimer of warranty.

46. Under the Quitclaim Deed and Assignment, Defendants assumed the responsibility for "all reclamation" on the Properties.

47. Defendants have breached their contractual reclamation obligations by failing to seek a replacement of the Western States' reclamation bond and failing to accept the transfer to them of all of Western States' operating permits.

48. Western States has been injured by Defendants' breach. Although Western States no longer owns the Properties, Western States has been unable to obtain a release of its bond of \$264,080 until Defendants accept the transfer of all of Western States' reclamation obligations on the Properties. Moreover, since the time the Quitclaim Deed and Assignment was executed, Western States has incurred reclamation-related costs related to the Properties in excess of \$41,000 which it would not have expended but for Defendants' breach. Western States has suffered damages in excess of \$305,080 as a result Defendants' actions.

49. WHEREFORE, Western States prays that this Court find that the Defendants breached their contractual obligations to Western States and grant judgment in its favor and against the Defendants in an amount to be determined at trial, plus costs, attorneys' fees and all other relief which this Court finds just and proper.

FOURTH CLAIM FOR RELIEF - BREACH OF CONTRACT -
SPECIFIC PERFORMANCE

50. Western States repeats and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 49 above.

51. Western States has, at all times prior to Defendants' breach, offered to execute a transfer of its operating permits to Defendants, anticipating that Defendants would replace Western States' reclamation bond pursuant to the Option Agreement and the Quitclaim Deed and Assignment. Defendants has refused to accept a complete transfer of the operating permits for the Properties.

52. The equitable remedy of specific performance is necessary in this case. Although Defendants have refused to accept a complete transfer of the reclamation obligations for the properties, Defendants are presently operating the Properties. Also at this time, the State of Utah has not released Western States' reclamation bond for the Properties in the amount of \$264,080.00, and various operating permits for the Properties have not yet been transferred. So long as Western States remains bound by the State of Utah for reclamation for the Properties, further operations by Defendants, could result in sanctions by the State of Utah and/or a forfeiture of the reclamation bond and cause irreparable injury to Western States.

53. WHEREFORE, Western States prays that this Court order Defendants to specifically perform the terms of the Option Agreement and Quitclaim Deed and Assignment and obtain a replacement of Western States' reclamation bond on the properties and accept a transfer of all operating permits for the Properties.

FIFTH CLAIM FOR RELIEF - BREACH OF COVENANT OF
GOOD FAITH AND FAIR DEALING

54. Western States repeats and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 53 above.

55. As demonstrated by the parties' course of dealing prior to Defendants' breach and by the audit letter attached hereto as Exhibit C, both Western States and Defendants understood that the entire reclamation obligation on the Properties was to be undertaken by Defendants. However, upon the Utah Division of Oil, Gas and Mining's decision not to release Western States' reclamation bond until after Defendants had accepted an assignment of all of Western States' obligations under its operating permits, Defendants have refused to perform their contractual obligations.

56. Since the time Western States first demanded a reformation of the Quitclaim Deed and Assignment on or about March 10, 1989, Defendants have refused to reform the Quitclaim Deed and Assignment and refused to assume the entire reclamation obligation for the Properties.

57. Defendants have refused to reform the Quitclaim Deed and Assignment and refused to assume the entire reclamation obligation for the Properties while knowing all along that Defendants, under the agreement embodied in those two documents, was responsible for "all reclamation."

58. Defendants' refusals, in light of their knowledge of their reclamation obligations, constitute a breach of the covenant of good faith and fair dealing, and Western States has suffered substantial damages to be further proved at trial.

59. WHEREFORE, Western States prays that this Court order and adjudge that Defendants have breached and continue to breach their covenant of good faith and fair dealing and award Western States damages, to be further proved at trial, as well as other relief which this Court deems proper in light of Defendants' breach.

PRAYER FOR RELIEF

WHEREFORE, Western States requests that this Court:

a) Issue an order, absent an agreement and arrangement acceptable to Western States, that Defendants, their servants and employees be enjoined from conducting any leaching or mining activities on the Properties still covered by Western States' operating permits and bond during the pendency of this litigation and permanently thereafter;

b) Order that the Quitclaim Deed and Assignment be reformed to express the true intent of the parties and order that Western States and Asoma execute a corrected Quitclaim Deed and Assignment which substitutes the word "Assignee" for the word "Assignor" in the last sentence of paragraph 3 of that document in order to make it conform to the actual intent of the parties.

c) Adjudge that Defendants have breached their contractual obligations to Western States and order Defendants to pay such damages as are proved at trial, plus interest, to Western States.

d) Order Defendants to specifically perform the terms of the Option Agreement and Quitclaim Deed and Assignment and obtain a replacement of Western States' reclamation bond on the properties and accept a transfer of all operating permits for the Properties.

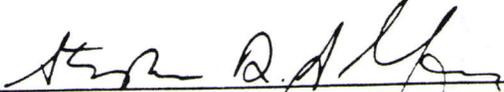
e) Order and adjudge that Defendants have breached and continue to breach their covenant of good faith and fair dealing and award Western States damages as set forth in the Second Claim for Relief as well as other relief which this Court deems proper in light of Defendants' breach.

f) Order Defendants to pay Western States' costs and expenses, including attorneys' fees, incurred in this action and interest on such sums as are found to be owing.

g) Order such other relief as this Court deems just and equitable.

Dated this 24th day of October, 1990

DAVIS, GRAHAM & STUBBS



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